

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 602 of 2000

in

SPECIAL CIVIL APPLICATION No 9767 of 2000

and

CIVIL APPLICATION No 8797 and 9045 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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RUCHIR H PATEL

Versus

GUJARAT UNIVERSITY

Appearance:

MR GIRISH PATEL, Sr.Counsel with Mr.Shalin Mehta for
appellant

MR SN SHELAT, Sr.Counsel with MR MITUL K SHELAT for
Respondent No. 1

MR SUDHIR NANAVATI, Sr.Counsel with MR SANJIV DAVE,
for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 13/10/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This Letters Patent Appeal is directed against the judgment and order dated 18th Sept.2000 passed by the learned Single Judge in Special Civil Application No.9767 of 2000 as a common order whereby the group of Special Civil Applications was decided.

2. Gujarat University provides Post Graduate Course, i.e. Master in Computer Application (MCA). It is a three years' integrated course and the education and training for the said course is imparted through five institutions as under:

(i) Gujarat Law Society Institute of Computer Technology (self-financed),

(ii) L.D.College of Engineering, Ahmedabad (Govt. College),

(iii) Nirma Institute of Technology, Ahmedabad (self-financed),

(iv) Rollwala Computer Centre (run by Gujarat University itself), and

(v) S.K.Patel Institute of Management and Computer Studies, Gandhinagar (self-financed).

All the aforesaid Institutions except Rollwala Computer Centre are affiliated to Gujarat University and Rollwala is a part of the University itself. For admissions in the aforesaid course, originally there were 181 seats distributed as: 40 for GLS Institute of Computer Technology, Ahmedabad; 33 for L.D.College of Engineering, Ahmedabad; 40 for Nirma Institute of Technology, Ahmedabad; 38 for Rollwala Computer Centre, Ahmedabad; and 30 for S.K.Patel Institute of Management and Computer Studies, Gandhinagar. Against these 181 seats, admissions were to be made and there were reservations for SC, ST, Socially and Educationally backward class, Graduates of Gujarat University, Graduates from Universities in the State of Gujarat other than Gujarat University, candidates from States other than Gujarat and NRIs including the candidates sponsored by NRIs or other Indian citizens who could pay the same amount as NRIs. For the purpose of these admissions, the fees have been prescribed against general category - i.e. Quota-1 the prescribed fee is Rs.12,000/- per annum; against payment of seats - i.e. Quota-2 the prescribed fees is Rs.47,500/- per annum and in the third quota, i.e.

Quota-3 - NRIs/candidates sponsored by NRIs other citizens - Rs.1,60,000/- per annum. The aforesaid structure of fees is meant only for the institutions which are self-financed as indicated above. For the purpose of admissions to the aforesaid course, the University held a Centralised Entrance Test on 2nd July 2000 for which the merit list was declared on 18th July 2000. In the said merit list, the appellant petitioner as a Graduate of Gujarat University, was at Sr.No.111. There is no dispute that so far as the open seats are concerned, the last candidate who was admitted was at Sr.No.87 in the merit list which was declared on 18th July 2000 for the purpose of admission to 181 seats. The appellant - petitioner, at Sr.No.111 had applied for admission in Rollwala Computer Centre as well as Nirma Institute of Technology and ultimately chose Nirma Institute of Technology for admission by payment of Rs.1,60,000/- in the category of NRI as an Indian citizen. The said amount was paid by him and he has been studying in Nirma Institute of Technology as such. There is no dispute that even for this category, the Institute has to follow the merit from amongst those who choose for admission against the NRI seats in the institute itself and the appellant being at Sr.No.1 in the merit list as NRI candidate in Nirma Institute of Technology was admitted on 5th August 2000 and since then he has been studying as such.

3. It is unfortunate that All India Council of Technical Education of New Delhi took some time in taking a decision with regard to the increase in the number of seats and lately on 17th August 2000, as per the decision taken by the All India Council of Technical Education, New Delhi, additional seats were declared in the month of August 2000 after the admissions against 181 seats had been finalised. Accordingly, the University issued an advertisement on 1st September 2000 for admission against these additional 110 seats on the basis of the same select list as was declared on 18th July 2000 on the basis of the Test held on 2nd July 2000 and with the further addition that a sixth Institute had also been opened now so as to impart education for this very course of Master in Computer Application, namely, HLA College, at Ahmedabad which too is affiliated to the Gujarat University as a self-financed Institute. Admission against all these 110 seats were to be made in the existing five Institutes and the sixth one, HLA College and the other three self-financed Institutes. After the advertisement dated 1st September 2000, the candidates were called for interview for the aforesaid course against the 110 seats. The consideration was kept

confined only to those candidates who could not be admitted against the 181 seats earlier. In other words, the candidates who had already been admitted were kept out of consideration. In the backdrop of the aforesaid facts, several Special Civil Applications were filed before this Court challenging the course of action adopted by the University since then for the purpose of admission against these 110 seats and the present appellant was one of the petitioners in Special Civil Application No.9767 of 2000.

4. When the matter came up before the learned Single Judge, a consensus was arrived at between the parties and based on such consensus, the guidelines were issued by the Court for admission of the students for additional seats on payment and non-payment as well as in the newly created sixth Institute, i.e. HLA College, as under:

(A) The students already admitted against Payment Seats in the institutes, namely, GLS Institute of Computer Technology, Nirma Institute of Technology and S.K.Patel Institute of Computer Science will be first adjusted against the newly sanctioned Free (Non payment) seats within their respective colleges according to merit. While giving this benefit of going from payment seats to non-payment seats, the reservation as per the Government policy for SC/ST/SEBC, including students of other Universities of the State and outside the State shall be maintained. It is clarified that while giving benefit to a student for going from payment seat to free (non-payment) seats, the student already admitted in a particular institute will only be eligible to opt for free seat in that institute only and the options will be limited to the number of newly sanctioned free (non-payment) seats.

(B) After adjusting the non-payment seats as indicated in "A" above in the three institutions, the other seats, both payment and non-payment, including the seats in A.E.S. Institute (H.L.Campus) may be offered to the candidates, strictly on merit, from the original select list from serial No.1 and the wait list candidates who had not been admitted to any of the aforesaid institutions, including the students admitted in Rollwala Computer Centre and L.D.Engineering College, where the admissions had already been closed. After exhausting the original list and the wait list as indicated above, if still there

remains vacant seats, the Central Admission Committee of the University may prepare a fresh list, who has applied for admission earlier, strictly according to merit and as per the merit list, the remaining seats may be filled up. While doing so, the seats reserved for SC/ST/SEBC and other categories, reservation as per Government policy be followed strictly in accordance with the rules.

(C) The change over from payment to non-payment seats will not include the seats filled up by NRI students. No options are required to be given to NRI students for shifting to non-payment seats.

(D) It is made clear that the students who are already admitted in Rollwala Computer Centre and L.D.Engineering College will not be permitted to shift from those colleges because of the arrangements as indicated above.

With the aforesaid observations and directions, the writ petitions were disposed of and the notices were discharged and it was also mentioned that these guidelines shall not be a precedent for future admission or in other words, the guidelines shall cease to apply after the present admission in the different institutions mentioned in the order for this academic year is over. It further appears from para 6 of the judgment of the learned Single Judge that the Counsel for the appellant had not accepted the suggestions and he could not be said to be a party to this consensus. It has been recorded by the learned Single Judge in the body of the judgment itself that Mr.Bhatt representing one of the petitioners had submitted that NRI students who are admitted in these institutions should also be given chance to opt for non payment seats, but the learned Single Judge did not accept this argument on the ground that if the NRI student is allowed to opt for non payment seats, then they will lose their status of NRI category and further that the NRI students are admitted by the respective colleges by inviting applications directly from NRI students and the Joint Admission Committee of the University has no role in selection of NRI candidates.

5. The present Letters Patent Appeal was admitted on 28th September 2000 and thereafter an affidavit dated 11th October 2000 has been filed on behalf of the Nirma Institute of Technology, i.e. respondent no.2 and an affidavit-in-rejoinder thereto dated 12th October 2000 has also been filed. The controversy has therefore

become very limited before us. The grievance of the present appellant is that in case his candidature is not considered against the 110 seats which have become available while the admissions are being made on the basis of the same select list in which his name is at Sr.No.111, his name will be against the 181 seats only compared to the total number of seats as he had obtained admission by payment of Rs.1,60,000/- as he had no choice and it was under compulsion that he had to choose admission against the NRI seats. Had these 110 seats been made available right from the beginning, he could have been admitted against the free seat being at Sr.No.111 in the merit list because his case is that after the utilisation of 110 seats if the merit is followed, then he being at Sr.No.111, gets admission against a free seat and thereby even if the payment made by him this year in the Nirma Institute of Technology is taken to have already deposited and is not returned, he may not have required to be pay the fees in the remaining two years, i.e. second and third years of this Course. The main thrust of the argument is that the candidates at position below No.111 may now get admission against the free seat without making any payment whereas he being at a higher merit position, had to seek admission in NRI quota by making payment of Rs.1,60,000/ as he had no choice at that time and these fortuitous circumstances of the non-availability of the 110 seats at the appropriate stage, but little later should not put him to any prejudice despite his higher merit vis-a-vis other candidates who are at merit position lower than Sr.111.

6. As against this submission made on behalf of the appellant, it has been submitted on behalf of the respondents that the NRIs by themselves form a particular class and once for any reason, the appellant had chosen to seek admission against the NRI seat and has already commenced his studies against that seat, there is no question of now allowing him to revert back to any other category. It has also been submitted by Mr.Shelat on behalf of the University that the appellant is the only candidate who has raised this grievance and no other candidate out of the total 111 candidates who have been admitted against the NRI category in different self-financed institutions as above has raised any grievance about it and in case the appellant is now allowed to be considered then all other candidates who are similarly situated will have to be included and the whole process of admission will suffer further delay and the notice with regard to the choice etc. will have to be re-issued and that may not be expedient nor it would be conducive to the interest of the large number of

students who have been admitted in different institutions. Mr.S.I.Nanavati appearing on behalf of Nirma Institute of Technology has also invited our attention to an order passed by a Division Bench in yet another matter, i.e. Special Civil Application No.4641 of 2000 wherein the Division Bench had passed an order on 5th October 2000 directing that the admissions which are to be given hereinafter on NRI seats shall be given in accordance with the rules as are existing today, that is to say, genuine NRIs and the same has been conveyed to all University Colleges and Institutes in this regard, meaning thereby, that the admissions which have already been made against NRI seats have been saved henceforth, i.e. after the passing of the aforesaid interim order by the Division Bench, no institute can admit any candidate who is not strictly an NRI candidate against the NRI seat, meaning thereby that those candidates who are sponsored by the NRIs or those Indian citizens in a position and ready to pay the same amount as sought to be paid by the NRIs have been excluded and therefore, Mr.Nanavati submits that now when the other two special categories have been excluded and in case the NRIs in strict sense are not available, the Institute has to suffer financial loss.

7. Mr.Shelat has cited before us a decision of the Supreme Court in the case of T.M.A.Pai Foundation and ors. v. State of Karnataka and ors., reported in AIR 1995 SC 2431 and has placed reliance on para 20(1). The case of Raja Satyanarayana and ors. v. Osmania University, Hyderabad and ors., reported in AIR 2000 A.P. 423 has also been cited. However, we find that these cases have no application to the facts of the present case because in those cases for the additional seats, the separate and independent selection was held and admissions were not sought to be made on the basis of the same selection as in the present case. He has cited yet another case, i.e. Dr.Navin Jamval and ors. v. Dr.Arvind Kumar Kenkane and ors., reported in AIR 2000 All. 191 and we find that it has no relevance because that was a case relating to the seats which became vacant because certain students had left the course.

8. Having heard learned Counsel for both the sides, we find that the argument which has been raised by the present appellant cannot be said to be without force. The appellant is right in contending that he is being put to prejudice in the matter of admission to the open seats merely because the additional seats have become available subsequently and we do find that it is a case in which the higher merit is put to the prejudice as compared to

the candidate with lower merit because the candidates having a merit lower than the appellant are likely to get admission against the seats which have become available and they may get admission without making any payment whereas the appellant had to make the payment despite his higher merit and in normal course the candidate like the present appellant or other candidate similarly situated like him ought to have been allowed to compete against these 110 seats which have become available subsequently by treating as if these seats were available initially when 181 seats were announced for selection more particularly when it is the decision of the University that admissions against these 110 seats are also to be made on the basis of the very same selection. Out of the very same select list if the two classes are carved out only on the basis of the interval and the period of time when the seats became available, it will be creating a class within the class and therefore, the higher merit becoming a casualty against the lower merit is bound to create a heart-burning amongst the candidates having higher merit. However, in such academic matters when the studies of the students are advancing, the appellant has already studied for a period of more than two months by now and the admissions against the 181 seats have already been over, it would not be expedient in the academic interest and it would not be conducive now to halt the process of selection directing to take up the exercise de novo for the purpose of admission because there are more than one institutions and by this time even the admission against these 110 seats are quite belated and in case any fresh exercise is undertaken after including all the candidates like the appellant, it would consume further time while the interviews of the candidates for these 110 seats have already been postponed once and now the same are fixed tomorrow. Such exigencies may arise in the course of admission to educational institutions and for such exigencies even if a little price has to be paid, one has to pay such price as a part of the conditions which are prevailing and even for no fault because the concerned institution has taken little more time to increase the number of seats. The same can be taken care of in future only by taking decision with regard to the number of seats well in time. Mr. Patel has also submitted that the present appellant is the only candidate who has come before the Court and the other candidates who had sought admission have not approached this Court and therefore, by inclusion of the appellant alone in this exercise for reconsideration against the 110 seats is not going to create any complication. However, we are unable to agree with this contention for the simple reason that whether candidates who are

similarly situated like the appellant have come in appeal before us or not, the Court is not supposed to issue directions for an individual to encourage the litigious perseverance and ignore other identical cases and if at-all any directions are issued, it is desirable to include and cover all other candidates who belong to the same class. We also find that the directions which have been issued by the learned Single Judge on consensus of all other petitioners are just and take care of all candidates on payment seats and of free seats and therefore, the only category which has remained out of consideration is the category of NRIs. We find that the only loss the appellant may have to suffer is some pecuniary loss and hence it is not a case of any substantial loss or injustice so as to warrant any interference with the order of learned Single Judge.

9. For the reasons aforesaid, although we agree with the contention of the appellant, we do not find it to be a fit case for interference so as to disturb the directions by the learned Single Judge. This Letters Patent Appeal is accordingly dismissed. In the facts and circumstances of this case, no order as to costs.

10. Since the main appeal itself has been decided and dismissed today, there is no question of any stay in the Civil Application No.8797/2000 for stay and hence no order in C.A.No.9045/2000. The Civil Applications stand rejected accordingly.

(M.R. Calla, J.)

(R.R.Tripathi, J.)
Sreeram.